

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF TENNESSEE

In re:

No. 96-14933

Chapter 13

ORA L. BEDFORD

Debtor

**MEMORANDUM**

Appearances: Kenneth C. Rannick, Chattanooga, Tennessee, Attorney for Debtor

C. Kenneth Still, Chattanooga, Tennessee, Trustee

R. THOMAS STINNETT, UNITED STATES BANKRUPTCY JUDGE

The question before the court is whether to confirm the proposed chapter 13 plan of the debtor, Ora L. Bedford, despite the objection by the chapter 13 trustee. The trustee objects because the plan proposes to treat a student loan debt differently from the other non-priority unsecured claims. The trustee contends the plan discriminates unfairly against the other unsecured claims. 11 U.S.C. § 1322(b)(1).

The debtor proposes to pay \$363 to the trustee every two weeks for 60 months. The court assumes this means 26 payments per year or \$786.50 per calendar month.

The plan proposes two payments on secured claims. One is a regular maintenance payment of \$575 per month on a home mortgage. The other payment applies to two claims filed by the debtor's credit union. They total \$3,990.79. The plan establishes the allowed secured claim of the credit union as \$3,325. It provides for 15.9% interest to the credit union. The plan apparently provides for a monthly payment of \$108 to the credit union. It appears that it will take 40 months to pay the secured debt in full at this rate. This is not taking into account any cost to the trustee on payment of the debt.

The plan proposes a payment of \$36 per month on the student loan debt. This is the regular monthly payment. The proof of claim shows the total debt to be \$4,661.

The schedules list non-priority unsecured debts of about \$23,261, not including the student loan or the \$666 balance of the credit union claims. The schedules do not list any priority unsecured debts, and no priority claims have been filed.

Until the credit union debt is paid, the debtor will pay in \$786.50 per month. This will be paid \$575 on the home mortgage, \$108 to the credit union, and \$36 on the student loan. This will leave \$67.50 per month available to pay the other general unsecured claims. Payment of this amount for 60 months will make a total of \$4,050. If the credit union's secured debt is paid out after 40 months, there will be an additional \$108 per month for 20 months (a total of \$2,160) available to pay the other non-priority unsecured claims. (This amount equals the total of the maintenance payments to be paid on the student loan at the rate of \$36 per month for 60 months.) Thus, the total available to pay the other non-priority unsecured claims during the 60 months of the plan should be \$6,210. The court has not deducted the trustee's costs. For the purpose of argument, the court will deduct 10%, leaving a total payout of \$5,589. The student loan creditor is supposed to receive \$36 without the deduction of any trustee's costs.

At this rate the non-priority unsecured claims (not including the student loan) will be paid about 23%. Of course, they will receive a higher percentage if some of the creditors fail to file timely proofs of claims. The student loan creditor will receive 46% of its claim. This appears to be very unfair, but is it?

Suppose the plan put all the non-priority unsecured claims, including the student loan, in one class. These debts would total \$28,588. Suppose the plan also provided for another \$36 per month to be distributed to this class of claims; deducting 10%, that would make \$32.40 per month or a total of \$1,944 over a 60 month plan. The plan would pay \$7,533 on claims totaling \$28,588. The percentage payout would be 26% compared to the 23% actually proposed by the debtor.

This case deals with general or non-priority unsecured claims, which the court will refer to simply as unsecured claims. *Compare* 11 U.S.C. § 1322(a)(2) & 1325(a)(1).

Only the 13 debtor can propose a plan in a chapter 13 case. 11 U.S.C. § 1321. The debtor can propose a plan that creates more than one class of unsecured claims, but the plan cannot discriminate unfairly against any one class. 11 U.S.C. § 1322(b)(1).

Section 1322(b)(5) authorizes a plan to cure defaults on and make the regular payments on a long-term debt; by long-term debt, the court means a debt on which the last payment is due after the last plan payment by the debtor. 11 U.S.C. § 1322(b)(5). In this case the debtor's plan proposes that treatment for the student loan debt. Some courts have held that this kind of plan provision cannot be rejected or even attacked as unfair discrimination. This result is not necessary to reconcile § 1322(b)(1) and § 1322(b)(5). A plan provision that deals with a long-term debt as allowed by § 1322(b)(5) may unfairly discriminate. Section 1322(b) allows many different plan provisions that can be put into effect by classification of unsecured claims. Not every plan provision allowed by § 1322(b) automatically allows a classification that can not be attacked or rejected as unfair discrimination. *Compare In re Cox*, 186 B.R. 744 (Bankr. N. D. Fla. 1995) and *In re Taylor*, 137 B.R. 60, note 6 (Bankr. W. D. Okla. 1992).

The question, then, is whether this plan unfairly discriminates against the class of unsecured claims, which includes all the unsecured claims except the student loan debt.

Chapter 13 provides that completion of a plan generally does not discharge a student loan debt. 11 U.S.C. § 1328(a)(2) & 523(a)(8). For the purpose of argument, the court assumes the

student loan debt will not be discharged. The debtor desires to maintain regular payments on the student loan debt so that the amount she owes after completing the plan will not be increased as a result of failure to make the regular payments, and she will not be in default when she completes the plan.

The debtor will propose a plan with a favored class of unsecured claims because better treatment of the favored class will benefit the debtor more than an even distribution among all the unsecured claims. Section 1322(b)(1) authorizes this kind of discrimination based on the debtor's benefit to herself. As a general rule, the court sees little to be gained in considering whether the basis of the classification is reasonable separately from the degree of discrimination. The question is whether the discrimination is unfair to other unsecured creditors who might be paid more if the favored class were paid less. *In re Ratledge*, 31 B.R. 897, 899 (Bankr. E. D. Tenn. 1983); *In re Terry*, 78 B.R. 171, 173-174 (Bankr. E. D. Tenn. 1987). This case certainly fits the usual pattern.

The debtor has proposed to maintain small monthly payments on the student loan, only \$36 per month. The debtor has also proposed a 60 month plan instead of a 36 month plan. The obvious purpose is to equalize the treatment of the student loan and the other unsecured claims. As a result, the percentage paid on the other unsecured claims will be about the same as if the student loan was not preferred and the debtor increased her payments by \$36 per month. Furthermore, if some creditors fail to file their unsecured claims, as often happens, the payment on the other unsecured claims will be a higher percentage than the court has calculated.

Other courts have found that this kind of classification and treatment of unsecured claims does not unfairly discriminate. *In re Dodds*, 140 B.R. 542 (Bankr. D. Mont. 1992); *In re Tucker*, 159 B.R. 325 (Bankr. D. Mont. 1993); *In re Benner*, 156 B.R. 631 (Bankr. D. Minn. 1993); *In re Strickland*, 181 B.R. 598 (Bankr. N. D. Ala. 1995); *see also In re Terry*, 78 B.R. 171 (Bankr. E. D. Tenn. 1987); *In re Ratledge*, 31 B.R. 897, 900 (Bankr. E. D. Tenn. 1983) (extension of plan beyond 36 months relevant to fairness).

The court realizes that the real discrimination against the other unsecured claims results from delay. The student loan creditor will be receiving \$36 per month from the beginning of the plan. Until the secured portion of the credit union debt is paid, about 40 months into the plan, there will be only \$67.50 per month, less trustee's expenses, available to pay on the other unsecured claims. They total about \$24,000. When the credit union's secured debt is paid, the debtor will have paid about 10% on the other unsecured claims (assuming all are filed) compared to about 31% on the student loan claim. The percentages, however, may distort the story in this case. The court is dealing with small dollar amounts compared to the potential benefit to the debtor.

The court thinks the discrimination in this case is fair, and will enter an order confirming the plan.

This Memorandum constitutes findings of fact and conclusions of law as required by  
FED. R. BANKR. P. 7052.

BY THE COURT

[entered 1/16/97]

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R. THOMAS STINNETT  
UNITED STATES BANKRUPTCY JUDGE